IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 624 OF 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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PUSHPABEN, WIDOW OF JAGDISHKUMAR ALIAS GARBADDAS NARANDAS KHARVA & ORS. - Appellant(s)

Versus

AHMEDDIN SALAMBHAI ARAB & ORS. - Respondent(s)

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Appearance :
Shri Hiren M. Modi for Appellant(s).
Ms. Archana Acharya for Respondent (s) : 1 - 2.
None for Respondent (s) : 3 & 6 though the name of Shri Uday R. Bhatt is shown in the daily board.
None for Respondent (s) : 4 – 5 & 7 - 11.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/08/2007

ORAL JUDGMENT

The appellants-claimants, being partly aggrieved by the award dated 30th May, 1981 passed by the learned Motor Accident Claims Tribunal, Kheda at Nadiad in M.A.C.P. No.27 of 1979, are before this Court seeking enhancement to the extent of Rs.50,000/-.

2. The learned Tribunal below has held that the driver, owner and Insurance Company were liable; in absence of an appeal or cross objections challenging the liability by any of them, it would not be possible for this Court to hold that the learned Tribunal below was unjustified in holding the three answerable to the award made in favour of the claimants.

3. Shri Hiren M. Modi, learned Counsel for the appellants, after taking me through the evidence and the findings recorded by the learned Tribunal below, submitted that in absence of any evidence controverting the statement of the claimant that her husband was earning Rs.750/- per month, the learned Tribunal has erred in holding that the income of the deceased was Rs.400/- per month. He submitted that the dependency figure of Rs.250/- is on the lower side and the learned Tribunal below should have held that the dependency was to the extent of Rs.500/- at least.

4. Ms. Archana Acharya, learned Counsel for the Insurance Company, however, submitted that the learned Tribunal below was justified in making the award though it erred in holding that the multiplier of 20 (twenty)could be applied. According to her, looking to the age of the deceased, which undisputedly was 25 years, the multiplier of 18 (eighteen) could only be applied.

5. From the evidence of Pushpaben,widow of the deceased, it would appear that the income of the deceased was Rs.750/- per month or Rs.25/- per day. Contrary to this, no evidence has been brought on record except a feeble suggestion to the said Pushpaben that her husband never told her about his real income.

6. In the opinion of this Court, such evidence could not decide the facts, nor could make the learned Tribunal below justified in holding the monthly income to be Rs.400/- only. Even if I have a miser's view, then too, I must hold that the income of the deceased could safely be assessed at Rs.600/- per month. Out of the said amount, an amount of Rs.200/- must be deducted towards personal expenses of the deceased and the dependency should be calculated at the rate of Rs.400/- per month or Rs.4,800/- per year.

7. In the opinion of this Court, the learned Tribunal below was

not justified in applying the multiplier of 20 (twenty) because in view of the judgements of the Supreme Court, the multiplier of 18 (eighteen) only should have been allowed. Applying the multiplier of 18 (eighteen), I hold that under the head of loss of future income, the claimants would be entitled to a sum of Rs.84,800/-, that is, additional sum of Rs.24,800/-, rounding off the same, I will hold that the appellants would be entitled to a sum of Rs.25,000/- in addition to what has been awarded by the learned Tribunal below. The respondents would be severally and jointly liable to answer the claim and the amount awarded in favour of the claimants. The said amount shall carry interest at the rate of 6% interest per annum from the date of the application till the date of realisation.

8. The appeal is allowed to the extent indicated above. No costs.

[R.S.Garg, J.]

*kamlesh**